

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN RE: GOLD KING MINE RELEASE
IN SAN JUAN COUNTY, COLORADO,
ON AUGUST 5, 2015

No. 1:18-md-02824-WJ

This Document Relates to All Cases

**ORDER ADOPTING SPECIAL MASTER'S REPORT AND RECOMMENDATION ON
PLAINTIFFS' MOTION TO TRIFURCATE TRIAL**

THIS MATTER comes before the Court on Plaintiffs' Motion to Trifurcate Discovery and Trial, Doc. 271, filed August 15, 2019 ("Motion to Trifurcate"), and on Special Master Hon. Alan C. Torgerson's Report and Recommendation on Plaintiffs' Motion to Trifurcate Trial, Doc. 305, filed September 11, 2019 ("Special Master's R&R"), and Amendment to Report and Recommendation on Plaintiffs' Motion to Trifurcate Trial, Doc. 316, filed September 30, 2019.

Plaintiffs assert that this case should proceed in three phases to maximize efficiency, and that phasing is consistent with common practice, the Federal Defendants' practice as plaintiffs in environmental enforcement cases, and case law. Defendants oppose the Motion to Trifurcate on the grounds that Plaintiffs' proposed phased approach provides inadequate time for expert discovery, fails to address some claims and issues, will make discovery disputes more likely, would be less efficient than conducting all discovery in a single phase resulting in significantly increased costs, and will delay resolution of the member cases. *See* Joint Memorandum of Defendants in Opposition to Plaintiffs' Motion to Trifurcate Discovery and Trial, Doc. 277, filed August 20, 2019.

After reviewing the Motion to Trifurcate and the related briefing, the Special Master "order[ed] that discovery be conducted in two phases and recommend[ed] to the trial judge in New Mexico that the trial that will be conducted in New Mexico be divided into three phases." Order

on Plaintiffs' Motion to Trifurcate Discovery, Doc. 304, filed September 11, 2019; *see also* Order Amending Order on Plaintiffs' Motion to Trifurcate Discovery, Doc. 315, filed September 30, 2019. "The first phase of discovery will include the majority of the discovery needed to resolve this case." Doc. 304 at 2. The second phase will include discovery regarding allocation, contribution, and cost recovery among the Defendants after the Phase One and Phase Two trials. Doc. 304 at 6. No objections to the Special Master's Order on Plaintiffs' Motion to Trifurcate Discovery have been filed.

The Special Master recommends that the trial judge in this matter who will conduct the trials in New Mexico,¹ separate the trial into three phases as follows:

1. Phase One trial on the following issues:
 - a. Liability under CERCLA, including whether there was negligence on the part of the Federal Defendants and Environmental Restoration
 - b. Tort liability;
 - c. Damage claims on behalf of the Individual Plaintiffs; and
 - d. Economic damage claims and past costs claims on behalf of the Sovereign Plaintiffs.
2. Phase Two trial on the following issues:
 - a. Claims brought under the Restoration Conservation Recovery Act, including Sovereign Plaintiffs' claims for injunctive relief;

¹ "The parties agree that the case filed by the State of Utah, 1:18-cv-00319 in this multi-district litigation and 2:17CV00866 in the United States District Court for the District of Utah, will be remanded at the conclusion of pretrial proceedings to the Utah District Court from which it was transferred." Special Master's R&R at 1 n.1. *See also* 28 U.S.C. § 1407(a) ("Each action so transferred [to any district for coordinated or consolidated pretrial proceedings] shall be remanded by the [Judicial] panel [on Multidistrict Litigation] at or before the conclusion of such pretrial proceedings to the district from which it was transferred").

- b. Claims brought under the Clean Water Act, including Sovereign Plaintiffs' claims for injunctive relief;
 - c. Sovereign Plaintiffs' claims for natural resource damages; and
 - d. The remedies necessary to address contamination in the environment including remediation and abatement.
3. Phase Three trial on the following issues:
- a. Allocation and contribution claims among the Defendants;
 - b. Issues of cost recovery among the Defendants; and
 - c. The issues of cost recovery brought by Environmental Restoration against the State of New Mexico.

Special Master's R&R at 2-3. The Special Master stated that "the issues to be tried and the phasing of the trials under Fed. R. Civ. P. 42(b) may need to be modified as the time for each trial approaches." Special Master's R&R at 6. No objections to the Special Master's R&R have been filed.


The Court finds that Special Master Hon. Alan C. Torgerson carefully considered the Parties' interests and the issues in discovery and trial of this very complex multi-district litigation, and that his recommendation to trifurcate trial, which he developed concurrently with his Order to phase discovery, is well designed to achieve the just, speedy, and inexpensive determination of this matter.

IT IS, THEREFORE, ORDERED that:

- (i) The Court **ADOPTS** Special Master Hon. Alan C. Torgerson's Report and Recommendation on Plaintiffs' Motion to Trifurcate Trial, Doc. 305, filed

September 11, 2019, and Amendment to Report and Recommendation on Plaintiffs' Motion to Trifurcate Trial, Doc. 316, filed September 30, 2019.

- (ii) Plaintiffs' Motion to Trifurcate Discovery and Trial, Doc. 271, filed August 15, 2019, is **GRANTED** to the extent it is consistent with Special Master Hon. Alan C. Torgerson's Order on Plaintiffs' Motion to Trifurcate Discovery and his Report and Recommendation on Plaintiffs' Motion to Trifurcate Trial as amended.

A handwritten signature in black ink, appearing to read 'William P. Johnson', is written over a horizontal line.

WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE